

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY JG DC
05 OCT 25 AM 10:40

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN, MEMPHIS

LaVERN W. HARRIS, SR.,

Petitioner,

vs.

MARK H. LUTTRELL, JR.,

Respondent.

X
X
X
X
X
X
X
X
X
X
X

No. 05-2768-M1/P

ORDER CORRECTING THE DOCKET
AND
ORDER DIRECTING PETITIONER TO FILE AN IN FORMA PAUPERIS AFFIDAVIT
OR PAY THE HABEAS FILING FEE

Petitioner LaVern W. Harris, Sr., booking number 05129365, who is apparently a pretrial detainee at the Shelby County Criminal Justice Complex ("Jail") in Memphis, filed a pro se petition pursuant to 28 U.S.C. § 2241 on October 13, 2005.¹ The Clerk shall record the respondent as Shelby County Sheriff Mark H. Luttrell, Jr.²

¹ Although the petition was docketed as one brought pursuant to 28 U.S.C. § 2254, the petitioner, a pretrial detainee, is not "in custody pursuant to the judgment of a State court." 28 U.S.C. § 2254(a). The Clerk is ORDERED to correct the docket to reflect that this is a § 2241 petition.

² Although the petition lists the respondent as Shelby County, the proper respondent to a habeas petition is the petitioner's custodian. See Rumsfeld v. Padilla, 124 S. Ct. 2711, 2718 (2004). The Clerk is ORDERED to remove Shelby County as a party to this action.

②

A habeas petition carries a filing fee of five dollars (\$5.00). 28 U.S.C. § 1914(a). Harris's petition is not accompanied by either the filing fee or a motion to proceed in forma pauperis. Accordingly, Harris is ORDERED either to submit a properly completed in forma pauperis affidavit demonstrating his indigency, along with an inmate trust fund account statement, or pay the filing fee within thirty (30) days of the entry of this order. The Clerk is ORDERED to mail a copy of the prisoner in forma pauperis affidavit to petitioner along with this order.³ Failure to timely comply with any requirement of this order will result in dismissal of the petition without further notice for failure to prosecute.

IT IS SO ORDERED this 24 day of October, 2005.



JON PHIPPS McCALLA
UNITED STATES DISTRICT JUDGE

³ In the interest of expediting this matter, petitioner is advised that, if his inmate trust fund account has a balance of at least twenty-five dollars (\$25.00), an application to proceed in forma pauperis will be denied.



Notice of Distribution

This notice confirms a copy of the document docketed as number 2 in case 2:05-CV-02768 was distributed by fax, mail, or direct printing on October 25, 2005 to the parties listed.

LeVern W. Harris
SHELBY COUNTY JAIL
05129365
201 Poplar Avenue
Memphis, TN 38103

Honorable Jon McCalla
US DISTRICT COURT